SEP 10 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 366

HAROLD H. EMMONS,
Petitioner,

v.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOSCINSKI, THEODORE LEVIN and STATE BAR OF MICHIGAN
Respondents

RESPONDENTS' BRIEF OPPOSING CERTIORARI

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FOREWORD

The record in the Court of Appeals consisted of the printed portion filed in this court by petitioner with his petition for certiorari and also an unprinted portion consisting of (a) an affidavit identifying the rules of the Supreme Court of Michigan as to state bar grievance proceedings, (b) complaint, pleadings, briefs, etc., in the grievance proceedings, (c) pleadings, record, briefs, etc., in the Michigan Supreme Court prohibition proceedings, (d) typewritten transcript of the district court proceedings, and, (e) certain probate and circuit court orders.

Our request that the unprinted record also be filed in this court has been complied with. Citations to the unprinted portion will be prefixed by "U.R."

CONTENTIONS

Respondents oppose the petition herein on the grounds that:

1. No federal question of substance, or otherwise, is involved.

2. Petitioner did not (as to any alleged federal question) seek review, by this court, of the judgment of the Michigan Supreme Court which prohibited (a) petitioner's suit in the Ingham County court seeking declaratory judgment against the State Bar of Michigan as to the probate court orders and circuit court decrees quieting title, and (b) circuit court injunctive interference with the pendings state bar grievance proceedings. The district court had no appellate jurisdiction.

3. The interpretation and construction of the Michigan declaratory judgment statute and of the rules of the Michigan Supreme Court prescribing investigatory and disciplinary procedure as to professional misconduct of members of the bar of that court are solely state court functions.

4. Petitioner's real purpose in seeking declaratory relief as to probate court orders and decrees quieting title was to interfere with the state bar grievance proceedings which involved charges of professional misconduct committed years after such orders and decrees and which charges were in no way affected thereby.

FACTS

Background

Petitioner, under a will drawn by him for a client, was one of the executors, and one of the trustees of a residuary trust fund for the benefit of crippled children (U.R. 15-19).

Under an arrangement claimed to have been made by petitioner with a former probate judge (deceased), petitioner, in 1920, made probate sales of testator's realty to persons who were to and did convey the property to petitioner; petitioner having assured the judge that any profit made would be turned over to the trust (U.R. 65-66, 72, 97-98, 176-184, 264-279, 296-299). Later in 1924 decrees quieting title to the property thus acquired were entered in the circuit court.

In 1928, he filed his final account as executor, listing net estate assets of about a million dollars, consisting of land contracts receivable, cash, etc., held by him as sole surviving executor. This account was allowed by a successor probate judge and the residue was assigned to petitioner as trustee; he being ordered to furnish $120,000 trustee bond (U.R. 21 and U.R. Trans. 124). This was years after the probate sale orders and decrees quieting title.

State Bar Rules

Petitioner is a member of the State Bar of Michigan which was "integrated" by rules of the Michigan Supreme Court adopted November 21, 1935 and supplemented

March 16, 1936. These rules appear on pages 2-6 of the printed petition in the prohibition proceedings (U.R. 118-122 and 273 Mich. xxv-vlv, 304 Mich. lx1-lx111). Briefly, the rules provide for informal investigation, by designated prievance committees, of charges of unprofessional conduct of members of the state bar, ultimate filing of formal written complaint with the committee in case of probable misconduct, notice, appearance, answer, hearing by the committee of sworn testimony procurable by subpoena, filing of report and record in circuit court (if discipline other than private reprimand is recommended), opportunity to file exceptions, hearing before and determination by three circuit judges, and right of review by Supreme Court on the law, and on the facts in its discretion. Until the hearing before the three judges, the proceedings are not made public.

Grievance Proceedings

In September 1940 a formal complaint (U.R. 1-59) was filed with the respondent grievance committee. This complaint charged petitioner with professional misconduct in connection with the probate proceedings, i.e:

> 1. Having (a) failed to give the $120,000 trustee bond as ordered; (b) concealed such failure; (c) acted as trustee thereafter for years—filing court petitions as trustee and obtaining orders re the administration of the trust. (U.R. 21). (Section 15870 C. L. Mich., 1929, §27.3049 Stat. Ann. provides that neglect to furnish such bond in 30 days shall be considered as a declination of the trust).

2. Having, in April 1935, after a new successor probate judge had taken office, obtained (upon a petition which misrepresented the reason for failure to give the required bond) an order reducing to $300 the required trustee bond and thereafter making further misrepresentations in his final trustee account U.R. 22-45).

3. Having, during the period June 1928 to April 1935, paid himself $216,950.14 of the trust funds in wrongful self-dealings as to stock in a research corporation owned by him or his children (U.R. 3-5) and having concealed such transactions in his subsequent probate accounts filed in 1935-1936 (U.R. 12).

4. Having filed false sworn answer, in 1936, to accounting bill of complaint filed against him in the circuit court.

None of these charges turns on the effect of the probate sale orders in 1920 or the decrees quieting title to the realty in 1924, nor was the state bar or its committee a party in interest as to any suit brought by petitioner to quiet title to lands involved in the probate sales, nor a party to such proceedings.

As shown by the unprinted record, petitioner, in the grievance proceedings, pleaded catagorically to the charges (after appearance in person and by attorney); about 1000 pages of testimony were taken in the proceedings in 1942; briefs were filed by petitioner and then petitioner petitioned the state bar to reopen the proofs. This was done and additional testimony was taken (U.R. 90-114, 141-152).

State Court Declaratory Proceedings

On the eve of the filing of the report of the grievance committee, petitioner, in May, 1943, instituted in a circuit court of another county, proceedings against the state bar as sole defendant for injunction against continuance of the grievance proceedings and for declaratory judgment as to the effect of the probate sale orders and decrees quieting title (U.R. 170-197), Ex parte restraining order was entered by that court (U.R. 160).

Supreme Court Prohibition Proceedings

The State Bar filed original proceedings in the Supreme Court of Michigan to prohibit the circuit court declaratory proceedings on the grounds that, under the circumstances, the circuit court lacked jursidiction as to the grievance proceedings and the Michigan declaratory judgment statute was inapplicable (U.R. 115-197). The Supreme Court (State Bar of Michigan v. Ingham County Circuit Judge 307 Mich. 393) upheld the state bar's contentions and prohibited prescution of the circuit court proceedings, relegating petitioner to the grievance proceedings for his defense as to charges of unethical professional conduct. (U.R. 280-292). Petitioner was not only a defendant in the prohibition proceeding (U.R. 115-197) but appeared, filed briefs, and personally argued his contentions in the Supreme Court (U.R. 248-279). His subsequent petitions for rehearing and reconsideration were denied (U.R. 293-307, 343-346, 350, 352). He took no steps to appeal from the judgment of that court.

District Court Declaratory Proceedings

Thereupon petitioner instituted declaratory proceedings against respondents in the district court at Detroit (R. 1-27) which proceedings were dismissed, on respondents' motion, for want of jurisdiction (R. 30, 67). The district judge examined the record of the various proceedings, ante, which were introduced as exhibits and which were unquestioned (R. 51-52). No diversity of citizenship existed between the parties.

Circuit Court of Appeals Proceedings

From the judgment of dismissal entered in the district court petitioner appealed to the Circuit Court of Appeals, Sixth Circuit, which, after briefs and argument, affirmed the judgment of dismissal (R. 85) and later denied rehearing (R. 103).

ARGUMENT

Lack of Federal Question

Appellate Jurisdiction

As properly found by both the district court and the circuit court of appeals, no federal question was presented by petitioner's complaint filed in the district court.

Petitioner's right to practice law in Michigan does not stem from the federal constitution or from any federal statute.

Bradwell v. Illinois, 16 Wall. 130, 21L.ed. 442:

> "* * * the right to control and regulate the granting of license to practice law in the courts of a state is one of those powers which are not transferred to the Federal Government * * *."

Accord: *In re Lockwood*, 154 U.S. 116, 19S.Ct. 1082, 38L.ed. 929.

In re Summers, 89 Adv. Op. 1304, 1310.

This court has no jurisdiction to review an order of a state court disbarring a member of its bar.

Selling v. Radford, 243 U.S. 46, 37S.Ct. 373, 61L.ed. 585.

No claim is made that petitioner has not had, or will not have, due process of law in the disciplinary proceedings in which he has participated and has been fully heard. No report therein has yet been filed.

The District Court had no power to review the judgment of the Michigan Supreme Court.

Rooker v. Fidelity Truct Co. 263 U.S. 413, 44 S. Ct. 149, 68L.ed. 362.

Non Federal Questions

Petitioner sought declaratory relief under a state statute. The state bar contended that the statute was inapplicable and that the circuit court had no jurisdirtion to interefere with the pending disciplinary proceedings instituted under the Supreme Court rules. That called for determination of non federal questions and the judgment of the Supreme Court of Michigan thereon is res judicata.

Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

Huddleston v. Dwyer, 322 U. S. 232, 64 S. Ct. 1015, 88 L. Ed. 1246.

Smith v. O'Grady, 312 U. S. 329, 61 S. Ct. 572, 85 L. Ed. 859.

McCain v. Des Moines, 174 U. S. 167, 19 S. Ct. 633, 43 L. Ed. 936.

Petitioner's Purpose

Petitioner's purpose is to interfere with the prosecution of the disciplinary proceedings. This appears by the inclusion, in his bill of complaint in the crcuit court and in his complaint in the district court, of prayers for injunction restraining prosecution of the disciplinary pro-

ceedings and by the fact that neither of respondents have any interest that would justify making them the sole defendants in a declaratory proceeding as to the effect of the probate sale orders and decrees quieting title.

CONCLUSION

It is urged that the petition be denied.

Respectfully submitted,

GEORGE E. BRAND
Attorney for Respondents.

September 7, 1945